

Michigan Department of Civil Service

# REGULATION

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<b>Authority:</b> Regulations are issued by the State Personnel Director under authority granted in the Michigan Constitution and the Michigan Civil Service Commission Rules. Regulations are subordinate to the Commission Rules.			
<b>Subject:</b>  LEAVES OF ABSENCE			

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## 1. PURPOSE

This regulation sets forth ~~the~~ standards for approval and administration of FMLA paid and unpaid leaves, leaves of absence with and without pay, and waived rights leaves of absence.

~~Note: The State Personnel Director issues regulations under authority granted in the State of Michigan Constitution and the Michigan Civil Service Commission Rules. Regulations that implement Commission Rules are subordinate to those Rules. Rule references in regulations are provided for the reader's convenience and reflect the rules in effect when the regulation was promulgated. The current version of the Rules can be found at the Rules & Regulations section of the Michigan Department of Civil Service website at [www.mi.gov/mdcs](http://www.mi.gov/mdcs).~~

## 2. CIVIL SERVICE COMMISSION RULE REFERENCE

**NOTE:** This Section 2 reprints only selected Commission Rules for quick reference by the reader. Additional Rules (that are not reprinted) below may apply. The complete, current version of the Rules can be found at [www.michigan.gov/mdcs](http://www.michigan.gov/mdcs).

### ***Rule 2-11 Leave of Absence with Pay***

#### ***2-11.1 Authorization***

*An appointing authority may authorize salary payments to an employee to attend school, visit other governmental agencies, or undertake any other systematic improvement of the knowledge or skills required in the employee's work. Salary payments may be in whole or in part.*

#### ***2-11.2 Administrative Leave***

*An appointing authority may grant administrative leave with pay for necessary absence from duty for which annual, sick, or other leave with pay is not applicable. Additionally, the appointing authority must grant administrative leave when specifically required by the civil service commission.*

#### ***2-11.3 Disaster Response Leave with Pay***

*An appointing authority may grant a leave of absence with pay for up to 10 workdays in a 12-month period to an employee to provide volunteer specialized disaster relief services within or outside this state, if the following conditions have been met:*

- (a) The employee is skilled in emergency relief assistance and certified as a disaster services volunteer by the American Red Cross.*
- (b) The president or governor has declared the disaster.*
- (c) The American Red Cross has requested the services of the employee.*
- (d) If the services are to be rendered outside the state by an employee of the executive branch, the governor has approved the paid leave of absence as provided in MCL 30.411a.*

## **Rule 2-12 Leave of Absence without Pay.**

### **2-12.1 Authorization**

#### **(a) Permissive leave.**

- (1) Nonmedical leave of absence.** *An appointing authority may grant an employee a nonmedical leave of absence without pay and without loss of employment status.*
- (2) Medical leave of absence.** *An appointing authority may grant a medical leave of absence without pay for up to 6 months to an eligible employee whose sick leave is exhausted. An employee is eligible for a medical leave of absence only if the employee has the equivalent of at least 6 months full-time employment at the time the leave is granted. If an employee on medical leave requests an extension before the leave expires, an appointing authority is authorized to extend the leave to a maximum of one year. Any extension of a medical leave beyond one year requires the written approval of the state personnel director.*
- (3) Disaster response leave of absence.** *An appointing authority may grant a leave of absence without pay to an employee who is skilled in emergency relief assistance and certified as a disaster services volunteer by the American Red Cross to provide disaster or emergency relief assistance in this state.*

#### **(b) Mandatory leave.** *An appointing authority must grant a leave of absence without pay when specifically required by the civil service commission.*

### **2-12.2 Expiration**

*A leave of absence without pay expires on the date established by the appointing authority, unless extended by the appointing authority. If an employee on a leave of absence without pay does not return to work on or before the end of the leave, the employee is separated.*

### **2-12.3 Restoration to Position**

*When an authorized leave of absence without pay expires or the appointing authority authorizes a return to work before the end of the leave, the employee is returned to work as follows:*

- (a)** *Unless subsection (b) or (c) apply, the employee is returned to the position formerly occupied or an equivalent position.*
- (b)** *If the appointing authority has demoted the employee since the beginning of the leave under rule 2-6 [Discipline] or rule 3-3 [Appointments and Job Changes], the employee is returned to a position at the classification level to which demoted and is compensated within the range of rates approved for that classification level.*
- (c)** *If the employee's position was abolished during the leave, the employee is returned to the classified service in accordance with rule 2-5 [Employment Preference].*
- (d)** *At the expiration of a medical leave of absence, if the employee is medically qualified to return to work, the employee is returned to a position as provided in subsection (a), (b), or (c), as appropriate. If the employee is not medically qualified to return to work, the employee is separated.*

#### 2-12.4 Annual Leave Balance

- (a) **Retention during leave.** An employee may choose to retain an annual leave balance during a leave of absence in accordance with the official compensation plan.
- (b) **Limitation and exception.** Payment for annual leave due an employee who does not return from a leave of absence is at the employee's last rate of pay.

#### Rule 2-13 Waived Rights Leave of Absence

- (a) **Approval and extension.** An appointing authority may grant a waived rights leave of absence without pay for up to one year to an employee if the employee has the equivalent of at least 6 months full-time employment at the time the leave is granted. Any extension beyond one year requires the written approval of the state personnel director.
- (b) **Ineligible employees.** An employee in a limited-term appointment who has not achieved status in an indefinite appointment is not eligible for a waived rights leave of absence, unless authorized in writing by the state personnel director.
- (c) **Operation.** An employee granted a waived rights leave of absence cannot carry any annual leave balance during the leave. An employee on a waived rights leave has no right to return to the position formerly occupied or to an equivalent position upon expiration of the leave. If the employee returns to the classified service before the expiration of the waived rights leave through normal selection processes, the employee is not considered to have had a break in service.
- (d) **Separation.** If the employee does not return to the classified service before or upon the expiration of the leave, the employee is separated.

### 3. DEFINITIONS

#### A. Definitions as used in this Regulation

1. FMLA means the federal Family and Medical Leave Act, 29 USC §§2601, et seq.
24. Family care FMLA leave of absence means an approved ~~absence leave~~ of up to 12 workweeks during any 12-month period for (1) a serious health condition that makes the employee unable to perform the functions of the employee's position, (2) to care for the employee's spouse, son, daughter, or parent, or child of the employee, if such spouse, son, daughter, or parent has with a serious health condition, (3) birth of a child and care for the newborn child, or (4) placement with the employee of a child for adoption or foster care.
2. Leave of absence with pay means an approved absence without use of annual or sick leave credits during which the employee continues to receive compensation, fringe benefits, and service credits.

3. ~~Leave of absence without pay~~ means an approved absence without use of annual or sick leave credits during which the employee does not receive compensation, fringe benefits, or service credits.
4. ~~Medical leave~~ means an approved absence of up to 12 workweeks during any 12-month period because of a serious health condition that makes the employee unable to perform the functions of the employee's position.
53. ~~Medical leave of absence~~ means an approved absence, without pay, ~~of up to 6 months~~ because of a serious health condition that makes the employee unable to perform the functions of the employee's position.
64. ~~Parental leave of absence~~ means an approved ~~leave~~absence of up to 6 months ~~because of for~~ the birth or adoption of ~~a child of~~ the employee's ~~child~~ and ~~to care for of~~ the ~~new~~ child ~~or an approved absence of up to 12 workweeks for foster care placement of a child with the employee.~~
7. ~~Waived rights leave of absence~~ means an approved leave of absence without pay. The appointing authority is not required to return the employee upon expiration of the leave.

## 4. STANDARDS

### ~~A. Military Leave of Absence and Leave Due to Injury or Assault.~~

~~Military leave of absence and leave due to injury or assault are dealt with elsewhere. For Military leave of absence, see rule 2-14 [Veterans' Preference and Military Leave]. For leave due to injury or assault, see rule 5-9 [Supplemental to Workers' Disability Compensation] and regulation 5.13 [Disability Payment for Duty-incurred Injuries].~~

### ~~GA. Leave of Absence with Pay.~~

- a1. ~~An appointing authority may grant a leave of absence with pay for training and development, visits to other governmental agencies, and other authorized short-term absences from regular duties to improve systematically the knowledge or skills required in the employee's work. Civil service rules restrict the use of this type of leave to allow employees to attend school, accept an assignment with another governmental entity, or undertake any other systematic improvement of the knowledge or skills required in the performance of their work.~~
42. ~~A leave of absence with pay may be granted as administrative leave for necessary absences from duty when other leaves with pay are not applicable. An employee shall receive paid administrative leave in the following circumstances:~~Criteria for granting leave of absence.
  - ba. An employee summoned to jury service or subpoenaed as a witness for the people ~~for to~~ testify related to ~~their~~regular job functions is ~~granted leave.~~ During the leave, the employee is entitled to the difference between the employee's pay for providing the service and the employee's regular rate of pay (excluding any travel allowance paid

by the court) ~~during for the calendar period dates~~ of absence. If the employee uses annual leave ~~to cover the period of jury service~~, the employee is not required to reimburse ~~the department for monies~~ received from the courts.

~~eb.~~ An employee absent from work because of closure or declared inaccessibility of the employee's work station is granted leave. The employee is compensated paid and receives service and fringe benefit credits in accordance with regulation 5.06 [Compensation under Conditions of General Emergency].

~~dc.~~ An employee engaging in qualifying labor relations activities is granted leave and may be eligible for payment, service, or fringe benefit credits ~~for absence to engage in union activities or employee relations activities, as authorized in~~ see chapters 6 and 8 of the civil service rules and regulations.

~~ed.~~ An employee is granted ~~a leave of absence with pay on the date of a work-incurred injury~~ for any ~~or all~~ remaining regularly scheduled hours on the date of a work-incurred injury ~~the day of injury~~, if necessary.

~~e.~~ An employee is granted leave for disaster relief services, consistent with the requirements of rule 2-11.3, if authorized.

### **23. Payment and sick and annual leave accruals during a leave of absence with pay**

a. An employee ~~receives payment is paid~~ for the standard hours of work at the base rate of pay. ~~However, the employee is not compensated paid for any premium, unless the employee would be eligible for such the premium payment while on approved annual or sick leave under normal conditions. Any compensation received as a result of service from another entity necessitating a leave of absence with pay is subtracted from any state payment due.~~

b. An employee receives full service credit for the number of hours ~~that~~ the employee would have been scheduled to work.

c. An employee receives full fringe benefit coverage as if regularly employed.

d. Annual and sick leave ~~is are~~ accrued as if the employee is working. The employee cannot accumulate annual leave in excess of the maximum allowed established in rule 5-10.2, except in those instances where the limitations are waived, see under rule 5-10.2 ~~regulation 5.09~~ [Annual, Personal, and School Participation Leave].

~~e. Sick leave is accrued as if the employee is working.~~

### **EB. FMLA Family Care Leave and Medical Leave of Absence.**

1. **Purpose.** An FMLA leave may be taken for (1) a serious health condition that makes the employee unable to perform the functions of the employee's position, (2) care for the employee's spouse, parent, or child with a serious



health condition, (3) birth of a child and care for the newborn child, or (4) placement with the employee of a child for adoption or foster care.

~~42.~~ **Eligibility.** — ~~Eligible employees are those who have been employed by the State of Michigan for at least 12 months satisfactorily completed an initial probationary period and have worked at least 1,250 hours in the previous 12-month period are eligible for an FMLA leave.~~

~~23.~~ **Entitlement to Leave.** — ~~An eligible employee is entitled to a total of 12 workweeks of FMLA leave during a 12-month period. The initial 12-month period begins when FMLA leave is first taken. Subsequent 12-month periods begin when FMLA leave is taken after completing the previous 12-month period. (beginning on the first date the employee's family care leave, or medical leave is taken, the next 12-month period begins the first time leave is taken after completion of any previous 12-month period) for any of the following reasons:~~

~~a. Family Care Leave — To care for the spouse, son, daughter, or parent of the employee, if such spouse, son, daughter, or parent has a serious health condition.~~

~~b. Medical Leave — Because of a serious health condition that makes the employee unable to perform the functions of the position of such employee.~~

~~4.~~ **No Waiver of Immunity.** This regulation is not a waiver of immunity of the State of Michigan under the Eleventh Amendment to the U.S. Constitution.

~~35.~~ **Substitution Use of Paid Leave —**

~~a. An eligible employee who requests an family care leave or medical FMLA leave based on the employee's serious health condition must exhaust any sick leave before continuing on any unpaid FMLA leave. may elect, or the employer may require the employee, to use accumulated paid leave credits for the period of leave, except as specified below. Substitution of paid leave counts toward the eligible employee's 12-week entitlement.~~

~~ab. Under standard E.2.a. (family care leave), An eligible employee who requests an FMLA leave sick leave credits must reduce depleted to any sick leave balance of to 80 hours or fewer before the continuation of the family any FMLA leave to care for a spouse, parent, or child as unpaid leave as an unpaid leave of absence.~~

~~b. Under standard E.2.b. (medical leave), sick leave credits must be exhausted before the commencement of an unpaid medical leave of absence. This does not extend a medical leave of absence as provided for in standard D.1.a.~~

~~c. An eligible employee who requests an FMLA leave may elect to use any other accumulated paid leave credits for the leave.~~

d. A period when an employee uses annual or sick leave counts toward the employee's 12-workweek FMLA entitlement. If an appointing authority approves the use of banked leave time, deferred hours, or compensatory time for an otherwise FMLA-qualifying absence, that time is not counted against the 12-week FMLA entitlement.

**6. Pay Status**

a. If paid leave is used, the FMLA leave is paid with the employee receiving pay, service credit, and fringe benefits.

b. If paid leave is not used, the FMLA leave is unpaid, but the employee may continue current medical, dental, and vision plan benefits during the leave if the employee continues to pay the employee's share of premiums. No leave or service credit is accrued during an unpaid FMLA leave of absence.

**7. b. Scheduling of Leave**

~~(1)~~a. Consecutive. — A single FMLAThe leave may ~~be for a period not to exceed 12 consecutive workweeks.~~

~~(2)~~b. Cumulative. — An eligible employee whose FMLA leave, including any extensions, totals less than 12 workweeks during any 12-month entitlement period, is granted subsequent leaves up to a cumulative total of 12 workweeks during the 12-month period (beginning on the first day of the employee's family care or medical leave). During any 12-month entitlement period, an eligible employee's cumulative FMLA leaves cannot exceed 12 workweeks.

~~(3)~~c. Intermittent — Reduced Leave Schedules.

(a1) An employee may request an intermittent FMLA leave in writing. An appointing authority must grant intermittent leave or a reduced work schedule when medically necessary for a serious health condition of the employee or employee's spouse, parent, or child. The appointing authority may grant intermittent leaves or reduced work schedules after the birth or qualifying placement of a child.

~~(a)~~ Upon written request and when medically necessary, an employee is entitled to intermittent leave or a reduced work schedule for family care and medical purposes.

~~(b2)~~ An intermittent family care or medical leave cannot exceed a total of 12 workweeks during a 12-month entitlement period (beginning on the first day of the employee's family care or medical leave).



~~(c3) If an employee takes leave on an intermittent or reduced leave schedule, only the amount of leave actually taken, when compared to the employee's normal work schedule, may be counted toward the 12 workweeks of leave to which an employee is entitled.~~

~~(d) If an employee normally works less than full time, the amount of leave to which the employee is entitled is determined on a pro-rated basis. The intermittent leave entitlement for employees who normally work less than full time is prorated.~~

(4) **Alternative Position** — If an eligible employee requests an intermittent leave or a reduced work schedule ~~that is foreseeable~~ based on foreseeable planned medical treatment, the employer appointing authority may require the employee to transfer temporarily to an alternative position for which the employee is qualified and that (1) has equivalent pay and benefits and (2) better accommodates recurring periods of leave ~~than the regular employment position of that eligible employee.~~

8. Requesting. When foreseeable, employees should use the FMLA Employee Request Form (CS-1790) to request an FMLA leave. If the request is based upon the serious health condition of the employee, spouse, parent, or child, the appointing authority shall provide the employee with the Certification for Health Care Provider Form (CS-1789), which the employee must return within 15 calendar days.

9. Return. After an FMLA leave, the employee is returned to the same or an equivalent position at the same step of the salary range and resumes accumulating continuous service hours, hours toward the next salary step, and any other accumulations with no break in continuous service.

410. Duration ~~Exhaustion~~ of Leave.

~~— a. After exhausting the FMLA leave entitlement, an employee may be eligible for an additional medical or parental leave of absence, as provided in this regulation. Any approval of an extension of a family care leave and medical leave beyond 12 workweeks during any 12-month period is at the discretion of the appointing authority. If an extension is approved, the employer's contribution to health plan benefits does not continue beyond the initial 12 workweeks during any 12-month period.~~

## **DC. Leave of Absence without Pay.**

1. **Criteria for granting** ~~leave of absence.~~

a. **Medical leave of absence** — An appointing authority may grant a medical leave of up to 6 months to ~~An eligible employee whose sick leave is exhausted and who has with~~ the equivalent of at least 6 months of full-time employment ~~whose sick leave is exhausted at the time of the leave may be granted a medical leave of absence for up to 6 months by the appointing authority.~~ If an employee requests an extension before

the leave expires, an appointing authority may extend the leave up to up to a maximum of one year. Any unpaid portion of an FMLA leave resulting from the employee's serious health condition counts as part of the medical leave. An appointing authority must receive written approval from the State Personnel Director for any extension of a medical leave beyond one year.

b. **Parental leave of absence.** An appointing authority must grant an employee with status a parental leave for up to 6 months for the birth or adoption and care for a new child during the 12 months following the birth or adoption. Any absence or leave with or without pay, including FMLA leave, used for care of a new child counts as part of the 6-month parental leave entitlement.

~~bc.~~ **Leave of absence to accept an uUnclassified appointment—.** An employee appointed to an unclassified position in the unclassified service may be granted a leave of absence to cover for the period the employee of services in the unclassified position, as authorized in rule 1-9. The employee receives service credit for serving in an unclassified position upon return to the classified service.

~~ed.~~ **Disaster relief.** An employee may be granted a leave of absence to perform disaster relief services, as authorized in rule 2-12.1(a)(3).

e. **Other—.** An employee may be granted a leave of absence without pay to for further education or for other appropriate reasons.

## **B2. Leave of Absence—General Provision Durations.**

1. Subject to the limitations in this section, the appointing authority has the discretion to grant a leave of absence, as well as to and determine the its length of the leave.

2. An employee currently on a leave of absence may request early termination or an extension before the leave's expiration of the leave. The granting of such requests is at the discretion of the appointing authority.

3. An employee may request an extension before expiration of a leave of absence. Approval of the extension is at the discretion of the appointing authority, within the one year maximum.

4. Except for a waived rights leave of absence, the appointing authority must restore the employee to the position formerly occupied, or to an equivalent position. If the employee's position has been abolished while the employee is on leave of absence, the employee is returned to the classified service in accordance with rule 2-5 [Employment Preference].

## **23. Payment and sick and annual lLeave accruals**

a. An employee does not receive pay, service credit, or fringe benefits, or leave accruals.

b. The employee does not accrue annual leave during the period of the leave.

- ~~cb.~~ An employee may elect to be paid off for ~~a~~ part or all of the unused annual leave balance before entering ~~into~~ the leave.
- ~~d.~~ An employee may retain up to 80 hours of annual leave during ~~the period of the~~ leave. The appointing authority may approve retention of ~~An employee wanting to retain any annual leave balance in excess of 80 hours may do so only with the approval of the appointing authority.~~
- ~~e.~~ Retained aAnnual leave accruals ~~carried forward~~ are available ~~to the employee~~ upon return from the leave ~~of absence~~, see consistent with regulation 5.09 [Annual, Personal, and School Participation Leave].
- ~~fc.~~ ~~The employee does not accrue sick leave.~~ The employee's sick leave balance is frozen during the leave. Sick leave credits must be exhausted before ~~the commencement of any~~ unpaid medical leave ~~of absence~~.
- d. The employee's banked leave and deferred hours are frozen during the leave and are available upon return from the leave.

#### ~~34.~~ Return from leave of absence.

- ~~a.~~ Upon return to state service the employee is not considered to have a break in service.
- ~~ba.~~ **Generally.** Except as provided in subsection b, an The employee returning to duty at the end of a leave of absence without pay is returned to the classified position last occupied or an equivalent position. The employee is returned at the same salary or step of the salary range and starts to continues accumulateing current continuous service hours, hours towards the next salary step, and any other accumulations as if the employee has not been absent with no break in continuous service. If the employee's position was abolished during the leave, the employee is returned in accordance with rule 2-5.
- ~~b.~~ **SES from Unclassified Appointment.** The senior executive service (SES) contract of an employee who occupied an SES position is terminated at the beginning of a leave to accept an appointment to an unclassified position. On return to the classified service, the employee is not entitled to return to the former SES position and the employee's future status is determined as provided in rule 4-7.2(g).

#### ~~45.~~ Leave Payoffs upon separation.

- ~~a.~~ If ~~a~~ An employee who separates from the state service directly from a leave ~~of absence~~, the employee is paid for unused ~~annual leave at the last received rate of pay. If an employee fails to return from an unpaid parental, family care, or medical leave, the employer shall recover group health insurance premiums paid by the employer in accordance with applicable law.~~
- ~~b.~~ An employee who separates directly from a leave of absence has ~~accrued sick leave liquidated~~ in accordance with applicable rules and

~~the provisions of regulations, including rule 5-10 -5and regulations 5.02, 5.09, and 5.10.10 [Sick Leave].~~

#### **D. Military Leave of Absence.**

A career classified employee shall receive a military leave of absence for service in the uniformed services, consistent with federal law, rule 2-14, and regulation 2.04 [Military Leaves of Absence and Return to Work: Basic Rights]. Detailed information on supplemental pay, insurance coverage, seniority, and return to work rights are contained in rule 2-14 and regulation 2.04.

#### **F. Parental Leave.**

- ~~1. Eligibility — Eligible employees are those who have satisfactorily completed an initial probationary period and have worked at least 1,250 hours in the previous 12-month period.~~
- ~~2. Entitlement to Leave — An eligible employee is entitled to parental leave of up to 6 months because of the birth or adoption of a child and of up to 12 workweeks because of the foster care placement of a child with the eligible employee. An employee's entitlement to parental leave expires within 12 months after the birth or placement of a child.~~
- ~~3. Parental leave taken intermittently or on a reduced work schedule may be granted at the discretion of the appointing authority.~~
- ~~4. Parental leave taken intermittently or on a reduced work schedule cannot exceed a total of 12 workweeks during a 12-month period (beginning on the first day of the employee's parental leave).~~
- ~~5. The employer's share of its contribution of health plan benefits while an employee is on parental leave cannot exceed 12 workweeks during a 12-month period.~~
- ~~6. Substitution of Paid Leave — An eligible employee who requests a parental leave may elect, or the employer may require the employee, to use accumulated paid leave credits for the period of leave, except sick leave credits cannot be used.~~

#### **GE. Waived Rights Leave of Absence.**

1. An employee who terminates state employment may be granted a waived rights leave of absence by the appointing authority of up to one year. ~~This type of leave of absence is granted~~ to protect the employee's continuous service, seniority, and any benefits connected with length of service. An appointing authority may extend a waived rights leave of absence up to one additional year upon providing written notice to the State Personnel Director. The State Personnel Director must approve any further extension in writing.
2. ~~The~~ An employee on a waived rights leave does not accrue annual, sick, or other annual leave during the period of the leave.

3. ~~An employee cannot carry any annual leave balance forward and on a waived rights leave of absence~~ is paid off for ~~the any~~ annual leave balance ~~at the start of the leave~~ at the last received rate of pay ~~upon entry into the leave, and cannot carry any annual leave balance forward.~~
4. ~~An employee on a waived rights leave of absence does not accrue sick leave.~~ The employee's sick leave balance is frozen during the waived rights leave.
5. The department is not required to ~~accept the employee return the employee to a position in the classified service~~ during or upon expiration of the waived rights leave.
6. At any time during the ~~period of the waived rights~~ leave, the employee may seek re-employment with the original department or ~~with an other~~y department. If successful, the employee is treated as if returning from a regular leave of absence without pay.
7. If an employee is not returned to the classified service ~~on or before by the expiration date end~~ of the leave, the employee is separated ~~and any~~.
- ~~8. An employee who separates directly from a waived rights leave of absence has accrued sick leave is liquidated in accordance with the provisions of regulation 5.10 [Sick Leave].~~

## CONTACT

Questions regarding this regulation should be directed to the Department of Civil Service, P.O. Box 30002, 400 South Pine Street, Lansing, Michigan 48909; by telephone at (517) 373-3048 or 1-800-788-1766; or by e-mail to [MDCS-BHRS@michigan.gov](mailto:MDCS-BHRS@michigan.gov).

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